

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1554 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PH PRAJAPATI

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR IS SUPEHIA for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/08/1999

ORAL JUDGEMENT

The petitioner before this court is the Gujarat State Road Transport Corporation, a Government Corporation (hereinafter referred to as 'the Corporation'). It challenges the judgment and Award dated 27th October, 1993, made by the Industrial Tribunal, Ahmedabad, in Reference (IT) No. 45/90. The respondent herein (hereinafter referred to as 'the

workman') has been serving as a Conductor with the Corporation, and at the relevant time, was posted in Sidhpur Depot. On 3rd January, 1985, when the workman was on duty on Unjha-Karli route, upon checking, some 8 passengers were found to have travelled without tickets, nor the Conductor had collected fare from them. Pursuant to the said incident, disciplinary inquiry was held against the workman. The workman was found to be guilty of acts of commission and omission amounting to misconduct enumerated in paragraphs 7 (a), 12 (b) and 27 of the Discipline and Appeal Procedure. Under order dated 27th January, 1986, the workman was dismissed from service. The departmental appeal preferred by the workman was dismissed on 14th September, 1986. However, the second appeal was accepted by the appellate authority and under order dated 17th August, 1987, the order of termination of service was set aside and the workman was ordered to be reinstated in service. The punishment imposed upon the workman was substituted by one of reduction in pay to the minimum of basic pay and the intervening period was ordered to be treated as leave without pay. Feeling aggrieved, the workman raised an industrial dispute which was referred to the Tribunal and numbered as aforesaid. The said Reference was tried and decided by the learned Tribunal under its judgment and Award dated 27th October, 1993. The impugned order of punishment has been modified to the extent that the workman's pay be reduced by three stages. The Corporation was ordered to pay the difference in wages payable to the workman. Feeling aggrieved, the Corporation has preferred the present petition.

It is indisputable that the workman had not collected the fare, nor he had issued tickets to 8 of the passengers. His defence that he had allowed the passengers to travel without paying the fare at the instance of the Driver concerned has neither been believed by the Disciplinary Authority nor by the learned Tribunal. The learned Tribunal held that the inquiry was held in just and fair manner. Moreover, the guilt of the workman has also been established. Besides the incident in question, earlier as many as 22 punishments were imposed upon the workman. In most of the said incidents, the workman was charged either for not issuing tickets or for issuing tickets for a lesser denominations or for allowing the passengers to travel free. The workman has, thus, been found to be indulging into financial irregularity on several occasions. For these misconducts, he had been visited with punishments ranging from fine to withholding of increments and reduction in pay. On several occasions, his increments have been

withheld ranging from some months or for year or two. However, the learned Tribunal has held that the workman can be said to have committed the acts of misconduct enumerated in paragraph 7 (a) of the Disciplinary and Appeal Procedure for Corporation employee. It further held that the act of misconduct committed by the workman can not be said to have been covered under paragraphs 12 (b) and 27 of the said Procedure. Paragraphs 7 (a), 12 (b) and 27 of the Procedure read as under :

para- 7 (a) :

Failure, without reasonable cause, on the part of Conductor to issue any ticket and thereby permitting ticketless travel and non-issue of ticket to a passenger by a Conductor after recovery of fares, or failure to issue a ticket to a passenger within the time prescribed in the orders of the Corporation.

para- 12 (b) :

Fraud, dishonesty or misappropriation in connection with the business or the property of the Corporation.

para-27 :

Repeated or continued negligence or neglect of work.

Considering the misconducts enumerated in the above referred Paragraphs, it is clear that the act of misconduct committed by the workman is not only covered under paragraph 7 (a), but also covered under paragraph 12 (b). The act of the workman speaks volume about his integrity and can not be said to be anything less than fraud and dishonesty in connection with the business of the Corporation. Since the workman was not charged for the act of negligence in his work, the misconduct in question may not be covered under paragraph 27 reproduced hereinabove.

Considering the fact that due inquiry has been

held in the acts of misconduct alleged to have been committed by the workman and that the guilt has been proved and has also been confirmed by the learned Tribunal, the imposition of punishment of reduction in pay to the basic pay can hardly be said to be harsh. Since the second appellate authority has thought it fit to give a chance to the workman and reinstated in service, the learned Tribunal ought not to have interfered with the punishment imposed upon the workman. Besides, the learned Tribunal has manifestly erred in holding that the misconduct committed by the workman is not covered under paragraph 12 (b) of the Procedure. The order of the learned Tribunal directing the Corporation to pay the difference of wages also does not appear to be sound. The payment of difference of wages would amount to paying premium over the misconduct committed by the workman.

For the aforesaid reasons, the judgment and Award dated 27th October, 1993, (Annexure - A to the petition) is quashed and set aside. The order of punishment imposed by the second appellate authority is restored. Rule is made absolute. The parties shall bear their costs.

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JOSHI